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which to redeem the land is not a valid objection, where it does not appear that in sales of this character time to redeem should be given.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 251; Dec. Dig. § 196.* 8 Va.-W. Va. Enc. Dig. 693.]

Appeal from Circuit Court, Buckingham County.

Suit by W. E. Hall's administrator against H. M. White and others. From a decree ascertaining and determining the balance due H. M. White, and establishing such amount as an equitable lien upon a contract to land, plaintiffs appeal. Affirmed.

F. C. Moon, of Lynchburg, for appellants.

A. B. Dickinson and *A. L. Holladay*, both of Richmond, for appellees.

CORNELL *v.* FORBES et al.

March 13, 1913.

[77 S. E. 481.]

Equity (§ 377*)—Trial—Directing Issues—Evidence.—The weight of evidence being clearly against a plaintiff upon each and all of his claims to relief, it was proper to refuse to direct an issue out of chancery.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 788-793; Dec. Dig. § 377.* 8 Va.-W. Va. Enc. Dig. 55; 14 Va.-W. Va. Enc. Dig. 592; 15 Va.-W. Va. Enc. Dig. 546.]

Appeal from Chancery Court of Richmond.

Suit by L. L. Cornell against W. S. Forbes and others. Decree for defendant Forbes, and plaintiff appeals. Affirmed.

S. A. Anderson, *A. G. Collins*, and *Jas. E. Cannon*, all of Richmond, for appellant.

Meredith & Cocke, of Richmond, for appellee.

SAVINGS BANK OF RICHMOND *v.* TODD et al.

March 13, 1913.

[77 S. E. 446.]

1. Judgment (§ 721*)—Prior Proceedings—Res Adjudicata.—Where a husband, about to execute an assignment for the benefit of creditors, executed a deed of trust settling certain property on his wife in consideration of her release of her dower interest in the residue

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

of the estate, which he thereupon conveyed to another trustee for creditors, and in a creditors' suit to administer the trust under the latter deed, it was determined that the husband was indebted to his wife in the sum of \$4,000, on account of certain bonds, such determination was conclusive of the fact of such indebtedness against a creditor, in a shipment suit to set aside the settlement trust for the wife as excessive.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1238, 1252; Dec. Dig. § 721.* 6 Va.-W. Va. Enc. Dig. 341; 14 Va.-W. Va. Enc. Dig. 466; 15 Va.-W. Va. Enc. Dig. 419.]

2. Dower (§ 42*)—Release—Settlement on Wife—Consideration.—A husband, being largely indebted, and desiring to make an assignment for the benefit of creditors, executed a deed of trust of certain of his property for the benefit of his wife, in consideration of her release of dower in the residue of his property, which, on the same day, he conveyed by separate deed to a trustee for the benefit of his creditors. Held, that the two deeds, being contemporaneous, were parts of the same transactions, and that the settlement deed was based on a valuable consideration, and was not voluntary.

[Ed. Note. Note.—For other cases, see Dower, Cent. Dig. §§ 123-128; Dec. Dig. § 42.* 4 Va.-W. Va. Enc. Dig. 805; 14 Va.-W. Va. Enc. Dig. 356; 15 Va.-W. Va. Enc. Dig. 310.]

3. Fraudulent Conveyances (§ 278*)—Settlement for Wife—Vacation—Burden of Proof.—Where a husband, about to make an assignment for the benefit of creditors, conveyed certain property to a trustee for the benefit of his wife, in consideration of her release of dower in the balance of his property, the burden was on a creditor, attacking such settlement as excessive, to show that it was so excessive as to raise a presumption of fraud.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig. §§ 801, 802; Dec. Dig. § 278.* 6 Va.-W. Va. Enc. Dig. 611.]

4. Equity (§ 402*)—Reference—Burden of Proof.—Where the burden was on complainant, in a suit to set aside a settlement by a debtor on his wife, to show that it was so excessive as to raise a presumption of fraud, the creditor was not entitled to an order referring the case to a commissioner in chancery, in order to enable complainant to obtain proof to establish his bill, nor until he had established his right to relief.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 874, 879; Dec. Dig. § 402.* 11 Va.-W. Va. Enc. Dig. 712; 14 Va.-W. Va. Dig. 885; 15 Va.-W. Va. Enc. Dig. 859.]

5. Fraudulent Conveyances (§ 225*)—Estoppel to Attack Conveyance.—Where a husband conveyed certain property for the benefit of

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his wife, in consideration of her release of dower in the residue of his estate, which was thereupon conveyed for the benefit of creditors, a creditor with knowledge, or means of knowledge, of the circumstances of the transaction, who participated in the sale of the husband's remaining lands free from the wife's dower, and received his share of the proceeds of the sale, making it impossible to place the wife in statu quo, could not thereafter maintain a bill to set aside the settlement to the wife as excessive.

[Ed. Note.—For other cases, see *Fraudulent Conveyances*, Cent. Dig. §§ 653-657; Dec. Dig. § 225.* 5 Va.-W. Va. Enc. Dig. 283; 15 Va.-W. Va. Enc. Dig. 348.]

Appeal from Law and Equity Court of City of Richmond.

Suit by the Savings Bank of Richmond, a creditor of Charles L. Todd, insolvent, against John T. Powers, as trustee of Charles L. Todd and others. From a decree overruling the motion of complainant to refer the cause to a commissioner in chancery and dismissing the bill, it appeals. Affirmed.

A. W. Patterson and *W. S. McNeil*, both of Richmond, for appellant.

H. R. Pollard, of Richmond, for appellees.

NORTHERN NECK STATE BANK, INC., *v.* GILBERT PACKING CO. et al.

March 13, 1913.

[77 S. E. 451.]

1. Attachment (§ 115*)—Affidavit—Sufficiency—Alternative Allegations.—An attachment affidavit alleging that defendant was doing, or about to do, either the first or the second or the third of the three acts relied on as grounds for attachment was void; it being essential that at least one of the grounds be stated affirmatively.

[Ed. Note.—For other cases, see *Attachment*, Cent. Dig. §§ 315-322; Dec. Dig. § 115.* 2 Va.-W. Va. Enc. Dig. 93; 14 Va.-W. Va. Enc. Dig. 133; 15 Va.-W. Va. Enc. Dig. 97.]

2. Attachment (§ 241*)—Abatement—Time.—The authority given under Code 1904, § 2981, to enter judgment abating an attachment, may be exercised at any time before a final judgment disposing of the property attached, though a motion to abate the attachment has been previously overruled.

[Ed. Note.—For other cases, see *Attachment*, Cent. Dig. §§ 829-838; Dec. Dig. § 241.* 2 Va.-W. Va. Enc. Dig. 119; 14 Va.-W. Va. Enc. Dig. 135.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes